

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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IN RE: REMBRANDT TECHNOLOGIES, LP  
PATENT LITIGATION

ALL CASES

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) MDL Docket No. 07-md-1848 (GMS)  
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**DEFENDANTS' JOINT APPLICATION FOR  
APPOINTMENT OF LEAD AND LIAISON COUNSEL**

The defendants in this proceeding respectfully make this submission in response to the Court's October 31, 2007 Order (the "Order") requesting that interested counsel file applications for lead and liaison counsel appointments. The defendants have conferred and, taking into account the criteria enumerated in the Order for such appointments, have unanimously agreed to ask the Court to appoint the attorneys identified below to act as lead and liaison counsel.

Although the defendants are unanimous regarding this submission, it should be emphasized that defendants include separate, unrelated corporate entities with sometimes different and unique interests and defenses. For example, there is significant variation in the patents asserted against each of the defendants. The roles of lead and liaison counsel will necessarily be focused on administration and efficiency, especially with respect to issues common to the defendants.

**A. The Defendants and the Asserted Patents**

Rembrandt has asserted different combinations of the following nine patents against the different defendants: U.S. Patent Nos. 4,937,819 (the "819 patent"), 5,719,858 (the "858 patent"), 5,852,631 (the "631 patent"), 5,243,627 (the "627 patent"), 5,008,903 (the

“‘903 patent”), 5,710,761 (the “‘761 patent”), 5,778,234 (the “‘234 patent”), 6,131,159 (the “‘159 patent”) and 6,950,444 (the “‘444 patent”).

The chart below lists the defendants to this action and the patents Rembrandt asserts against each of them:

<b>Defendant</b>	<b>Patents Asserted Against Defendant</b>
Comcast Corp. Comcast Cable Communications, LLC Comcast of Plano, LP	all 9 patents
Charter Communications, Inc. Charter Communications Operating, LLC	all 9 patents
Time Warner Cable Inc. Time Warner Cable LLC Time Warner New York Cable LLC Time Warner Entertainment Company, L.P. Time Warner Entertainment-Advance / Newhouse Partnership	all 9 patents
Cox Communications, Inc. Coxcom Inc. Cox Enterprises, Inc.	all 9 patents
Cablevision Systems Corporation CSC Holdings, Inc.	‘858, ‘819, ‘631, ‘627, ‘903
Adelphia Communications Corp.	‘761, ‘234, ‘159, ‘444
Sharp Corp. Sharp Electronics Corp.	‘627
CBS Corp.	‘627
NBC Universal, Inc.	‘627
ABC, Inc.	‘627
Fox Entertainment Group, Inc. Fox Broadcasting Company	‘627

#### **B. Lead Counsel for the Defendants**

Pursuant to the Court’s Order and in line with the defendants’ consultations, defendants propose that lead counsel for the defendants would primarily be responsible for

coordinating the activities of the defendants to promote the efficient advancement of this action, and have the following responsibilities:

- 1) To determine and coordinate the positions of each of the defendants on substantive and procedural issues and, where possible, to attempt to reach consensus on such issues;
- 2) To identify, with input from all defense counsel, the tasks to be performed by the defendants and the dates by which they must be performed;
- 3) To coordinate the completion of common tasks. Such coordination will be performed collaboratively with all defense counsel, considering (i) judicial and party economies; (ii) the desires and potentially differing positions of the different defendants; and (iii) that the cases may be tried before different courts; such tasks include preparation of internal work product, but also include propounding and responding to common discovery requests, taking and defending depositions, preparing briefs and presenting oral arguments, etc.; and
- 4) To serve as a point of contact to plaintiff's counsel on substantive and procedural issues.

It is proposed that lead counsel, as well as other defense counsel, will present positions to the Court on behalf of multiple defendants, where appropriate and with consent of those defendants. Moreover, each defendant, through its own counsel, reserves the right to present its own position regarding any substantive or procedural matters on which, notwithstanding the above-described attempts to reach a consensus, the defendants do not reach a common position. Further, defendants recognize that they may have unique defenses and therefore anticipate some degree of individual discovery and motion practice, notwithstanding their intention to coordinate to the extent practical.

The defendants request that the following law firms be appointed to act as lead counsel in this MDL proceeding:

Lead Counsel	Role
KAYE SCHOLER LLP David S. Benyacar  425 Park Avenue New York, NY 10022-4591 Tel. (212) 836-7763 Fax (212) 836-6404	Lead counsel on substantive and procedural issues relating to the '858, '819, '631, '903, '761, '234, '159, and '444 patents;  Co-lead counsel on substantive and procedural issues relating to the '627 patent
WEIL, GOTSHAL & MANGES LLP Matthew D. Powers Edward R. Reines  201 Redwood Shores Parkway Redwood Shores, CA 94065 Tel. (650) 802-3022 Fax (650) 802-3100	Co-lead counsel on substantive and procedural issues relating to the '627 patent

Both Kaye Scholer and Weil, Gotshal & Manges are willing and able to undertake the time-consuming responsibilities of lead counsel, and both have committed to working cooperatively with others. In addition, both have extensive experience as lead patent litigation counsel, and have committed the resources to advance the litigation in a timely manner.

Defendants believe that a co-lead counsel arrangement for the '627 patent is appropriate. Many more defendants have been sued on the '627 patent than the other eight patents, and ABC, CBS, Fox, NBC and Sharp have only been sued on the '627 patent. The defendants sued on the '627 patent fall into two distinct groups. In one group are defendants who are accused of infringement based upon their *receipt* of television signals (cable companies and one television manufacturer.) In the other group are defendants who are accused of infringement based upon their *transmission* of television signals (television networks.) Rembrandt asserts different claims of the '627 patent against the two distinct groups of defendants. In light of these circumstances, including the potential for discovery and substantive

issues to arise with respect to one group that are not present for the other group, defendants believe it is appropriate to appoint co-lead counsel for the '627 patent.

**C. Liaison Counsel for the Defendants**

Pursuant to the Court's Order and in line with defendants' consultations, defendants propose that liaison counsel for the defendants have the following responsibilities:

- 1) To communicate with the Court and with plaintiff's counsel on administrative, scheduling and other matters of coordination;
- 2) To maintain and distribute to cocounsel and to plaintiff's liaison counsel an up-to-date service list;
- 3) To receive and, as appropriate, distribute to cocounsel orders from the court and documents from opposing counsel;
- 4) To attempt to resolve discovery disputes that are common to multiple defendants; and
- 5) To call meetings of cocounsel for the purpose of coordinating common discovery activities.

The defendants request that the following law firm should be appointed to act as liaison counsel in this MDL proceeding with respect to all of the patents:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
Jack B. Blumenfeld (#1014)  
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Morris, Nichols, Arsht & Tunnell is willing and able to undertake the time-consuming responsibilities of liaison counsel, and has committed to working cooperatively with others. In addition, the firm frequently assumes and successfully performs the responsibilities associated with liaison counsel identified above, and has committed the resources to advance the litigation in a timely manner.

## D. Conclusion

For the foregoing reasons, the defendants respectfully request that the Court appoint as lead and liaison counsel the aforementioned attorneys, whom they unanimously wish to serve in those roles.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2007 I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to:

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I further certify that I caused to be served copies of the foregoing document on November 15, 2007 upon the following in the manner indicated:

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